

ORIGINAL

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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

ST. LOUIS POLICE RETIREMENT SYSTEM,
 On Behalf of Itself and All Others Similarly
 Situated and Derivatively on Behalf of Nominal
 Defendant ABAXIS, INC.,

Plaintiff,

v.

CLINTON H. SEVERSON, ALBERTO R.
 SANTA INES, KENNETH P. ARON,
 VLADIMIR E. OSTOICH, DONALD P.
 WOOD, MARTIN V. MULROY, RICHARD J.
 BASTIANI, MICHAEL D. CASEY, HENK J.
 EVENHUIS, PRITHIPAL SINGH, VERNON
 E. ALTMAN, and ERNEST S. TUCKER,

Defendants,

and

ABAXIS, INC.

Nominal Defendant.

Case No.

12

5036

CLASS ACTION

**VERIFIED SHAREHOLDER CLASS
 ACTION AND DERIVATIVE
 COMPLAINT**

JURY TRIAL DEMANDED

YGR

1 Plaintiff St. Louis Police Retirement System ("Plaintiff"), by the undersigned attorneys,
2 submits this Verified Shareholder Class Action and Derivative Complaint (the "Complaint")
3 against the defendants named herein, and alleges upon personal knowledge with respect to itself,
4 and upon information and belief based upon, *inter alia*, a review of public filings, press releases
5 and reports, and an investigation undertaken by Plaintiff's counsel, as to all other allegations
6 herein, as follows:

7 **NATURE OF THE ACTION**

8 1. This is a shareholder action brought by Plaintiff individually, on behalf of itself and
9 other similarly situated stockholders, and derivatively on behalf of nominal defendant Abaxis, Inc.
10 ("Abaxis" or the "Company") against certain members of its Board of Directors (the "Board") and
11 certain of its executive officers seeking to remedy defendants' breaches of fiduciary duties, unjust
12 enrichment, statutory violations, and other violations of law.

13 2. In gross breach of their fiduciary duties as directors of the Company, the Grantor
14 Defendants (as defined herein) have wrongfully caused and allowed the Company to issue
15 excessive and improper shares of Company common stock in settlement of restricted stock units
16 (the "Restricted Stock Units") granted to company employees, including the Officer Defendants
17 (as defined herein), in violation of the Company's 2005 Equity Incentive Plan (the "2005 Plan")
18 and at the expense of the Company and its shareholders.

19 3. The 2005 Plan, originally approved by shareholders in October 2005 and
20 subsequently amended by the Company and approved by shareholders in October 2008 and again
21 in October 2010, allows the Company to grant awards of Restricted Stock Units and other equity-
22 based awards. The 2005 Plan contains a provision that no more than 500,000 shares of Company
23 common stock may be issued under the 2005 Plan upon exercise or settlement of "full value
24 awards," which includes Restricted Stock Units (the "Restricted Stock Limit").

25 4. Beginning in fiscal year ("FY") 2007, upon the recommendation of the
26 Compensation Committee, the Board granted Restricted Stock Units to certain Company officers,
27
28

1 including the Officer Defendants. Specifically, for FY 2007, 2008 and 2009, the Board granted
2 officers a total of 170,000, 130,000 and 130,000 Restricted Stock Units, respectively.

3 5. Despite the fact that Board had already granted 430,000 Restricted Stock Units to
4 certain officers, and upon settlement of those awards would be closing in on the Restricted Stock
5 Limit, the Board, with the specific approval of the Compensation Committee, violated the 2005
6 Plan by granting and subsequently issuing shares in settlement of additional Restricted Stock
7 Units far in excess of the Restricted Stock Limit. For FY 2010, 2011, 2012 and 2013, the Board
8 granted certain Officer Defendants 155,000, 155,000, 155,000 and 65,000 Restricted Stock Units,
9 respectively. In total, the Board granted to the Officer Defendants **960,000** Restricted Stock
10 Units, *i.e.*, ***nearly double*** the number that could be settled in accordance with the Restricted Stock
11 Limit. The total number of shares issued in excess of the Restricted Stock Limit is much higher,
12 as the Board also granted Restricted Stock Units, and subsequently issued shares in settlement
13 thereof, to numerous employees other than the Officer Defendants. Indeed, since FY 2007, the
14 Board has granted a total of **2,045,000** Restricted Stock Units, *i.e.*, more than ***four times*** the
15 number that could be settled in accordance with the Restricted Stock Limit. As of August 31,
16 2012, awards consisting of Restricted Stock Units covering an aggregate of 1,119,000 shares of
17 common stock were outstanding under the 2005 Plan.

18 6. In a Form 8-K filed with the Securities and Exchange Commission ("SEC") on
19 August 28, 2012 (the "August 28, 2012 8-K"), the Company stated that it received a letter from
20 the staff of the Listing Qualifications Office of the NASDAQ Stock Market ("NASDAQ")
21 informing the Company that it had failed to comply with Listing Rule 5635(c), which requires
22 listed companies to obtain stockholder approval for material amendments to an equity
23 compensation plan. Specifically, the Company admitted that it "exceeded the full value award
24 limit" because it purportedly believed that "such limit applied to each 500,000-share increase to
25 the overall share reserve increase approved by stockholders in 2005, 2008 and 2010." According
26 to the August 28, 2012 8-K, as of August 28, 2012, the Company had issued 870,179 shares of
27 Common Stock upon settlement of Restricted Stock Units granted under the 2005 Plan since
28

1 October 2005, some *370,179 units in excess of the Restricted Stock Limit*. A true and correct
2 copy of the August 28, 2012 8-K is attached hereto as Exhibit A.

3 7. As alleged in detailed herein, in gross breach of their fiduciary duties as directors
4 of Abaxis, the Grantor Defendants improperly and unlawfully granted, and subsequently issued
5 shares of Abaxis common stock in settlement of, Restricted Stock Units in excess of the Restricted
6 Stock Limit provided for in the 2005 Plan. Irrespective of defendants' purported belief that the
7 Restricted Stock Limit had somehow been increased, which is hard to believe in light of the fact
8 that the defendants who received the Restricted Stock Units and approved such awards were the
9 same individuals who developed and administered the 2005 Plan, Abaxis has sustained millions of
10 dollars in damages, and the Officer Defendants and other employees have garnered millions of
11 dollars in unlawful proceeds as a result of *ultra vires* grants of hundreds of thousands of Restricted
12 Stock Units.

13 8. On September 17, 2012, the Company filed with the SEC a Form DEF14A (the
14 "2012 Proxy") setting the Company's annual meeting for October 24, 2012 (the "Annual
15 Meeting") and soliciting stockholder votes at the Annual Meeting. The 2012 Proxy omits
16 information material to Plaintiff's and other shareholders' informed decision regarding proposed
17 amendments to the 2005 Plan, *e.g.*, an amendment to eliminate the Restricted Stock Limit (the
18 "Restricted Stock Limit Amendment"). A true and correct copy of the 2012 Proxy is attached
19 hereto as Exhibit B.

20 9. The 2012 Proxy is materially false and misleading in several respects, leaving
21 shareholders either uninformed or misinformed as to, among other things: (1) the bases for the
22 Compensation Committee's decision to eliminate the Restricted Stock Limit—*e.g.*, that the
23 Grantor Defendants had already violated the 2005 Plan by dramatically exceeding the Restricted
24 Stock Limit; (2) the Company's admission that it violated the 2005 Plan by exceeding the
25 Restricted Stock Limit; and (3) the number of Restricted Stock Units the Company has granted
26 beyond those that could be settled in accordance with the Restricted Stock Limit and the effect of
27 the Restricted Stock Limit Amendment on those excess Restricted Stock Units.
28

15. Nominal Defendant Abaxis is a California corporation with its principal place of business located at 3240 Whipple Road, Union City, California 94587. According to its public filings, Abaxis develops, manufactures, markets and sells portable blood analysis systems for use in the human or veterinary patient-care setting to provide clinicians with rapid blood constituent measurements. In October 2011, Abaxis also began providing veterinary reference laboratory diagnostic and consulting services for veterinarians.

16. Defendant Clinton H. Severson ("Severson") has served as the Company's President, Chief Executive Officer and a director since June 1996. He was appointed Chairman of the Board in May 1998. Upon information and belief, Severson is a citizen of the State of California. Severson has received the following Restricted Stock Units pursuant to the 2005 Plan:

Fiscal Year	Restricted Stock Units Received
2007	90,000
2008	50,000
2009	50,000
2010	55,000
2011	55,000
2012	55,000
2013	23,000

17. Defendant Alberto R. Santa Ines ("Santa Ines") has served as the Company's Chief Financial Officer and Vice President of Finance since April 2002. Santa Ines joined the Company in February 2000 as Finance Manager. In April 2001, Santa Ines was promoted to Interim Chief Financial Officer and Director of Finance, and in April 2002, he was promoted to his current position. Upon information and belief, Santa Ines is a citizen of the State of California. Santa Ines has received the following Restricted Stock Units pursuant to the 2005 Plan:

Fiscal Year	Restricted Stock Units Received
2007	20,000
2008	20,000
2009	20,000
2010	25,000
2011	25,000
2012	25,000
2013	10,500

18. Defendant Kenneth P. Aron ("Aron") has served as the Company's Chief Technology Officer since April 2008. Aron joined the Company in February 2000 as Vice President of Research and Development. Upon information and belief, Aron is a citizen of the State of California. Aron has received the following Restricted Stock Units pursuant to the 2005 Plan:

Fiscal Year	Restricted Stock Units Received
2007	20,000
2008	20,000
2009	20,000
2010	25,000
2011	25,000
2012	25,000
2013	10,500

19. Defendant Vladimir E. Ostoich ("Ostoich") is one of the Company's co-founders and is currently the Vice President of Government Affairs and Vice President of Marketing for the Pacific Rim. Ostoich has served as Vice President in various capacities at the Company since its inception, including as Vice President of Research and Development, Senior Vice President of Research and Development, Vice President of Engineering and Instrument Manufacturing and Vice President of Marketing and Sales for the United States and Canada. Upon information and belief, Ostoich is a citizen of the State of California. Ostoich has received the following Restricted Stock Units pursuant to the 2005 Plan:

Fiscal Year	Restricted Stock Units Received
2007	20,000
2008	20,000
2009	20,000
2010	25,000
2011	25,000
2012	25,000
2013	10,500

20. Defendant Donald P. Wood ("Wood") has served as the Company's Chief Operations Officer since April 2009. Wood joined the Company in October 2007 as Vice

1 President of Operations. Upon information and belief, Wood is a citizen of the State of California.
 2 Wood has received the following Restricted Stock Units pursuant to the 2005 Plan:

Fiscal Year	Restricted Stock Units Received
2011	25,000
2012	25,000
2013	10,500

6
 7 21. Defendant Martin V. Mulroy ("Mulroy") has served as the Company's Chief
 8 Commercial Officer for North America Animal Health since April 2012. Mulroy joined the
 9 Company in November 1997 as the Northeast Regional Sales Manager. He was promoted to
 10 Eastern Area Director of Sales in December 1998, and in January 2005 he was promoted to
 11 National Sales Director for the Domestic Veterinary market. In May 2006, Mulroy was promoted
 12 to Vice President of Animal Health Sales and Marketing for North America. Upon information
 13 and belief, Mulroy is a citizen of the State of California. Mulroy has received the following
 14 Restricted Stock Units pursuant to the 2005 Plan:

Fiscal Year	Restricted Stock Units Received
2010	25,000

16
 17 22. Defendants Severson, Santa Ines, Aron, Ostoich, Wood and Mulroy are
 18 collectively referred to hereinafter as the "Officer Defendants."

19 23. Defendant Richard J. Bastiani ("Bastiani") has served as a director of the Company
 20 since September 1995. Bastiani is a member of the Board's Audit Committee, Compensation
 21 Committee and Nominating and Corporate Governance Committee. Upon information and belief,
 22 Bastiani is a citizen of the State of California.

23 24. Defendant Michael D. Casey ("Casey") has served as a director of the Company
 24 since October 2010. Casey is a member of the Audit Committee, Compensation Committee and
 25 Nominating and Corporate Governance Committee. Upon information and belief, Casey is a
 26 citizen of the State of California.

27 25. Defendant Henk J. Evenhuis ("Evenhuis") has served as a director of the Company
 28 since November 2002. Evenhuis is a member of the Audit Committee and the Nominating and

1 Corporate Governance Committee and previously served as a member of the Compensation
2 Committee. Upon information and belief, Evenhuis is a citizen of the State of California.

3 26. Defendant Prithipal Singh ("Singh") has served as a director of the Company since
4 June 1992. Singh is a member of the Audit Committee, Compensation Committee and
5 Nominating and Corporate Governance Committee. Upon information and belief, Singh is a
6 citizen of the State of California.

7 27. Defendant Ernest S. Tucker ("Tucker") served as a director of the Company from
8 September 1995 to October 2011. Tucker was a member of the Audit Committee, Compensation
9 Committee and the Nominating and Corporate Governance Committee. Upon information and
10 belief, Tucker is a citizen of the State of California.

11 28. Defendants Severson, Bastiani, Casey, Evenhuis, Singh, and Tucker are
12 collectively referred to hereinafter as the "Grantor Defendants."

13 29. Defendant Vernon E. Altman ("Altman") has served as a director of the Company
14 since April 2011. Altman is a member of the Audit Committee and the Nominating and Corporate
15 Governance Committee. Upon information and belief, Altman is a citizen of the State of
16 California.

17 30. Defendants Severson, Bastiani, Casey, Evenhuis, Singh, and Altman are
18 collectively referred to hereinafter as the "Board Defendants."

19 31. The Officer Defendants, Grantor Defendants and Board Defendants are collectively
20 referred to hereinafter as the "Individual Defendants."

21 **DUTIES OF THE INDIVIDUAL DEFENDANTS**

22 32. By reason of their positions as officers and/or directors of the Company and
23 because of their ability to control the corporate affairs and business of the Company and its
24 subsidiaries, the Individual Defendants owed the Company and its shareholders fiduciary
25 obligations of good faith, trust, loyalty, due care, and candor, and were and are required to use
26 their best efforts to control and manage the Company and its subsidiaries in a fair, just, honest,
27 and equitable manner. The Individual Defendants were and are required to act in furtherance of
28

1 the best interests of the Company and its shareholders so as to benefit all shareholders equally and
2 not in furtherance of their personal interest or benefit. Each director and officer of the Company
3 owes to the Company and its shareholders the fiduciary duty to exercise good faith and diligence
4 in the administration of the affairs of the Company and its subsidiaries and in the use and
5 preservation of its property and assets, and the highest obligations of fair dealing.

6 33. The Individual Defendants, because of their positions of control and authority as
7 officers and/or directors of the Company, were able to and did, directly and/or indirectly, exercise
8 control over the wrongful acts complained of herein.

9 34. To discharge their duties, the Individual Defendants, as officers and/or directors of
10 the Company, were required to exercise prudent and reasonable supervision over the management,
11 policies, practices and controls of the Company and its subsidiaries. By virtue of such duties, the
12 Individual Defendants were required to, among other things:

- 13 a. exercise good faith in ensuring that the affairs of the Company and its
14 subsidiaries were conducted in an efficient, business-like manner so
15 as to make it possible to provide the highest quality performance of
its business;
- 16 b. exercise good faith in ensuring that the Company and its subsidiaries
17 were operated in a diligent, honest and prudent manner and complied
18 with all applicable federal and state laws, rules, regulations and
requirements and the Company's governing documents, *e.g.*, the 2005
Plan, as amended, including acting only within the scope of their legal
authority; and
- 19 c. make full, fair, and accurate disclosures to shareholders, including
20 when seeking shareholder approval for Board actions.

21 35. Grantor Defendants Bastiani, Casey, Singh, Evenhuis and Tucker, as members of
22 the Compensation Committee, were responsible for properly administering the 2005 Plan and
23 were required to comply with the obligations set forth in the Compensation Committee Charter
24 (the "Compensation Committee Charter"). According to the Compensation Committee Charter,
25 the purpose of the Compensation Committee is to, *inter alia*: (i) discharge the Board's
26 responsibilities relating to compensation of the Company's executive officers and directors; (ii)
27 review all components of executive officer and director compensation for consistency with the
28 Committee's compensation philosophy; and (iii) review and discuss with management the

1 Company's disclosures for use in any of the Company's annual reports on Form 10-K, registration
2 statements, proxy statements or information statements and for producing an annual report on
3 executive compensation for inclusion in the Company's proxy statement.

4 36. According to the Compensation Committee Charter, the Compensation Committee
5 members have the following authority and responsibilities:

- 6 (1) Recommend to the Board for determination on all compensation for
7 the Chief Executive Officer, including incentive-based and equity-
8 based compensation. The Chief Executive Officer may not be present
9 during such voting or deliberations.
- 10 (2) Review and recommend to the Board for determination and approval
11 annual performance objectives and goals relevant to compensation for
12 the Chief Executive Officer and evaluate the performance of the
13 Chief Executive Officer in light of these goals and objectives.
- 14 (3) Consider, in determining the long-term incentive component of
15 compensation for the Chief Executive Officer, the Company's
16 performance and relative shareholder return, the value of similar
17 incentive awards to chief executive officers at comparable companies,
18 and the awards given to the Company's Chief Executive Officer in
19 past years.
- 20 (4) Develop or review and recommend to the Board for determination
21 and approval the incentive-based or equity-based compensation plans
22 in which the Company's executive officers and employees participate,
23 and review and recommend to the Board for determination and
24 approval performance objectives and goals, salaries, and incentive
25 and equity awards for other executive officers.
- 26 (5) Approve all employment, severance, or change-in-control
27 agreements, special or supplemental benefits, or provisions including
28 the same, applicable to executive officers.
- (6) Review and advise the Board concerning both regional and industry-
wide compensation practices and trends in order to assess the
adequacy and competitiveness of the Company's compensation
programs for the CEO, other executive officers and directors relative
to comparable companies in the Company's industry and geography.
- (7) Review and propose to the Board from time to time changes in
director compensation.
- (8) The Committee shall review and discuss with management the
Company's disclosures contained under the caption "Compensation
Discussion and Analysis" for use in any of the Company's annual
reports on Form 10-K, registration statements, proxy statements or
information statements and make recommendations to the Board that
the CD&A be approved for inclusion in the Company's annual

reports on Form 10-K, registration statements, proxy statements or information statements.

- (9) Prepare an annual report on executive compensation for inclusion in the Company's proxy statement for the annual meeting of stockholders, in accordance with applicable rules and regulations.
- (10) Perform such other activities consistent with this Charter, the Company's Bylaws and governing law, as the Committee or the Board deems necessary or appropriate.
- (11) Make regular reports to the Board of Directors regarding the foregoing.
- (12) Review and reassess the adequacy of this Charter as appropriate and recommend any proposed changes to the Board for approval.

SUBSTANTIVE ALLEGATIONS

2005 Equity Incentive Plan

37. According to the Company's SEC filings, the 2005 Plan restated and amended the Company's 1998 Stock Option Plan (the "1998 Plan"). The 2005 Plan allows the Company to award "stock options, stock appreciation rights, restricted stock awards, *restricted stock units*, performance cash awards, performance shares, performance units, deferred compensation awards or other share-based awards" to employees, directors and consultants. (Emphasis added). Prior to FY 2007, however, equity-based grants to the Company's executive officers were comprised solely of stock options.

38. According to the 2005 Plan, its purpose is to:

advance the interests of the Participating Company Group and its shareholders by providing an incentive to attract and retain the best qualified personnel to perform services for the Participating Company Group, by motivating such persons to contribute to the growth and profitability of the Participating Company Group, by aligning their interests with interests of the Company's shareholders, and by rewarding such persons for their services by tying a significant portion of their total compensation package to the success of the Company. The Plan seeks to achieve this purpose by providing for Awards in the form of Options, Stock Appreciation Rights, Restricted Stock Awards, Performance Shares, Performance Units, Performance Cash Awards, *Restricted Stock Units*, Deferred Compensation Awards and other Stock-Based Awards as described below.

(Emphasis added).

39. Pursuant to the 2005 Plan, the maximum aggregate number of shares of common stock that may be issued under the 2005 Plan was 4,886,000 shares, which equals (i) the 1998 Plan's authorized pool of 4,386,000 shares plus (ii) 500,000 shares.

40. On October 28, 2008, the Company’s shareholders approved an amendment to the 2005 Plan to increase the aggregate number of shares of common stock reserved for issuance under the 2005 Plan by 500,000 shares to 5,386,000 (the “2008 Amendment”).

41. On October 27, 2010, the Company’s shareholders approved a second amendment to the 2005 Plan to increase the aggregate number of shares of common stock reserved for issuance under the 2005 Plan by another 500,000 shares to 5,886,000 (the “2010 Amendment”).

42. In seeking shareholder approval of the 2010 Amendment, however, Grantor Defendants Severson, Bastiani, Evenhuis, Singh, and Tucker failed to disclose to shareholders that they had already granted, and subsequently issued shares in settlement of, Restricted Stock Units well in excess of the Restricted Stock Limit. Indeed, as of October 2010, the Board had already granted Company officers, including the Officer Defendants, a total of **740,000** Restricted Stock Units, ***nearly 50% more*** than could be settled in accordance with the Restricted Stock Limit.

43. The 2005 Plan, as amended in 2008 and 2010, contains the Restricted Stock Limit, which provides that “in no event shall more than five hundred thousand (500,000) shares in the aggregate be issued under the Plan pursuant to the exercise or settlement of ... Restricted Stock Unit[s].”

44. The Restricted Stock Limit has remained at 500,000 shares throughout the existence of the 2005 Plan and was not increased pursuant to the 2008 Amendment or the 2010 Amendment.

Restricted Stock Activity

45. There were no Restricted Stock Units granted during FY 2006 or prior to March 31, 2006.

46. According to the Company's Form 10-K filed with the SEC on June 12, 2009 (the "2009 10-K"), the following table summarizes Restricted Stock Unit activity during FY 2007, 2008 and 2009:

	Number of Shares	Weighted Average Grant Date Fair Value
Unvested at March 31, 2006	—	\$ —
Granted	305,000	24.56
Vested	—	—
Canceled or forfeited	(10,000)	21.43
Unvested at March 31, 2007	295,000	\$ 24.66
Granted	267,000	21.73
Vested	(22,000)	25.06
Cancelled or forfeited	(46,000)	23.11
Unvested at March 31, 2008	494,000	\$ 23.21
Granted	254,000	23.68
Vested	(45,000)	23.34
Cancelled or forfeited	(13,000)	20.09

47. According to the Company's Form 10-K filed with the SEC on June 14, 2012 (the "2012 10-K"), the following table summarizes Restricted Stock Unit activity during FY 2010, 2011 and 2012:

	Number of Shares	Weighted Average Grant Date Fair Value
Unvested at March 31, 2009	690,000	\$ 23.43
Granted	309,000	18.33
Vested	(75,000)	23.72
Canceled or forfeited	(60,000)	23.56
Unvested at March 31, 2010	864,000	\$ 21.57
Granted	333,000	24.45
Vested	(244,000)	23.43
Canceled or forfeited	(13,000)	23.14
Unvested at March 31, 2011	940,000	\$ 22.09
Granted	436,000	27.25
Vested	(237,000)	22.12

Canceled or forfeited	(19,000)	24.03
Unvested as of March 31, 2012	1,120,000	\$ 24.06

48. According to the Company's Form 10-Q filed with the SEC on August 9, 2012, the following table summarizes Restricted Stock Unit activity for the first quarter of FY 2013:

	Time-Based Restricted Stock Units		Performance-Based Restricted Stock Units ¹	
	Number of Shares	Weighted Average Grant Date Fair Value	Number of Shares	Weighted Average Grant Date Fair Value
Nonvested at March 31, 2012	1,120,000	\$ 24.06	-	\$ -
Granted	120,000	35.62	21,000	35.62
Vested	(197,000)	23.99	-	-
Canceled or forfeited	(7,000)	24.95	-	-
Nonvested at June 30, 2012	1,036,000	\$ 25.40	21,000	\$ 35.62

Restricted Stock Unit Awards to the Officer Defendants

49. According to the Company's SEC filings, the Board has granted, and the Officer Defendants and others have received, Restricted Stock Units far in excess of those that could be settled in accordance with the Restricted Stock Limit, as follows:

FY 2007

Recipients	Restricted Stock Units Received
Clinton H. Severson	90,000
Alberto R. Santa Ines	20,000
Kenneth P. Aron	20,000
Vladimir E. Ostoich	20,000
Robert B. Midler	20,000

FY 2007 OFFICER TOTAL	170,000
RUNNING OFFICER TOTAL	170,000

¹ Starting in FY 2013, the Company grants performance-based Restricted Stock Units, where vesting is based on achievement of corporate annual performance targets. During the first quarter of FY 2013, the Board approved the grant of 84,000 performance-based Restricted Stock Units, of which approximately 21,000 shares have been granted. Because each annual performance target is set at the start of each respective single-fiscal-year performance period, only 25% of the total performance-based Restricted Stock Unit awards are deemed granted each year over a four-year period.

FY 2008

Recipients	Restricted Stock Units Received
Clinton H. Severson	50,000
Alberto R. Santa Ines	20,000
Kenneth P. Aron	20,000
Vladimir E. Ostoich	20,000
Robert B. Midler	20,000

FY 2008 OFFICER TOTAL 130,000

RUNNING OFFICER TOTAL 300,000

FY 2009

Recipients	Restricted Stock Units Received
Clinton H. Severson	50,000
Alberto R. Santa Ines	20,000
Kenneth P. Aron	20,000
Vladimir E. Ostoich	20,000
Christopher M. Bernard	20,000

FY 2009 OFFICER TOTAL 130,000

RUNNING OFFICER TOTAL 430,000

FY 2010

Recipients	Restricted Stock Units Received
Clinton H. Severson	55,000
Alberto R. Santa Ines	25,000
Kenneth P. Aron	25,000
Vladimir E. Ostoich	25,000
Martin V. Mulroy	25,000

FY 2010 OFFICER TOTAL 155,000

RUNNING OFFICER TOTAL 585,000

FY 2011

Recipients	Restricted Stock Units Received
Clinton H. Severson	55,000
Alberto R. Santa Ines	25,000
Kenneth P. Aron	25,000
Vladimir E. Ostoich	25,000
Donald P. Wood	25,000

FY 2011 OFFICER TOTAL **155,000**
RUNNING OFFICER TOTAL **740,000**

FY 2012

Recipients	Restricted Stock Units Received
Clinton H. Severson	55,000
Alberto R. Santa Ines	25,000
Kenneth P. Aron	25,000
Vladimir E. Ostoich	25,000
Donald P. Wood	25,000

FY 2012 OFFICER TOTAL **155,000**
RUNNING OFFICER TOTAL **895,000**

FY 2013

Recipients	Restricted Stock Units Received
Clinton H. Severson	23,000
Alberto R. Santa Ines	10,500
Kenneth P. Aron	10,500
Vladimir E. Ostoich	10,500
Donald P. Wood	10,500

FY 2013 OFFICER TOTAL **65,000**
RUNNING OFFICER TOTAL **960,000**

50. Since FY 2007, the Board, based on the approval of the Compensation Committee,² has granted 960,000 Restricted Stock Units to the Officer Defendants and other Company officers. This number represents **460,000 shares** in excess of those that could be settled in accordance with the Restricted Stock Limit. Since FY 2007, the Board has granted to the Officers Defendants and other employees a total of 2,045,000 Restricted Stock Units, some **1,545,000 shares** beyond those that could be settled in accordance with the Restricted Stock Limit.

The Company Admits It Violated the 2005 Plan

51. On August 28, 2012, the Company filed with the SEC the August 28, 2012 8-K reporting the Company's receipt of a letter from the Listing Qualifications Office of NASDAQ

² According to the 2012 10-K, "the Compensation Committee approves all restricted stock unit grants to [the] Executive Officers and other executive officers."

1 informing the Company that it had failed to comply with Listing Rule 5635(c), which requires
2 listed companies to obtain stockholder approval for material amendments to an equity
3 compensation plan.

4 52. Specifically, in the August 28, 2012 8-K the Company admitted that it “exceeded
5 the full value award limit” because it purportedly incorrectly believed that “such limit applied to
6 each 500,000-share increase to the overall share reserve increase approved by stockholders in
7 2005, 2008 and 2010.” According to the August 28, 2012 8-K, as of August 28, 2012, the
8 Company had issued **870,179** shares of Common Stock upon settlement of Restricted Stock Units
9 granted under the 2005 Plan, some **370,179** shares in excess of the Restricted Stock Limit.

10 53. The Company claims that on August 22, 2012, it reported to the Listing
11 Qualifications Office of NASDAQ the violation and the Company’s proposed plan to regain
12 compliance with Listing Rule 5635(c). On August 28, 2012, the Listing Qualifications Office
13 provided to the Company a letter “concurring in the Company’s view that the issuance of shares in
14 settlement of restricted stock units in excess of the full value award limit caused the Company to
15 fail to satisfy the shareholder approval requirement of Listing Rule 5635(c)” and “agreeing to the
16 Company’s proposed remediation plan of amending the [2005] Plan to eliminate the full value
17 award limit and seeking shareholder approval of such amendment at its 2012 annual shareholders
18 meeting.”

19 **The Company Seeks to Eliminate the Restricted Stock Limit**

20 54. On September 17, 2012, the Company filed with the SEC the 2012 Proxy setting
21 the Company’s Annual Meeting for October 24, 2012 and soliciting stockholder votes at the
22 Annual Meeting. Specifically, the 2012 Proxy seeks stockholder votes to amend the 2005 Plan by
23 approving, *inter alia*, (1) an increase in the aggregate number of shares of common stock reserved
24 for issuance under the 2005 Plan of 900,000 shares, to bring the total to 6,786,000 (the “900,000
25 Share Increase”); and (2) the Restricted Stock Limit Amendment. However, the 2012 Proxy is
26 materially false and misleading. Indeed, the 2012 Proxy completely fails to disclose *any*
27 information regarding the purposes for and effects of the Restricted Stock Limit Amendment.
28

1 55. The 2012 Proxy states that in July 2012 the Board approved the 900,000 Share
2 Increase and in August 2012 the Compensation Committee approved the Restricted Stock Limit
3 Amendment. According to the 2012 Proxy, Defendants would have the Company's stockholders
4 believe that after the Board met in July 2012 to approve the 900,000 Share Increase, the
5 Compensation Committee separately met sometime in August 2012 and determined for no
6 particular reason to approve the Restricted Stock Limit Amendment. A reasonable stockholder
7 would want to know that the Company has admittedly violated the Restricted Stock Limit, which
8 is not disclosed in the 2012 Proxy, and why and under what circumstances the Compensation
9 Committee adopted the Restricted Stock Limit Amendment, in particular, whether the committee
10 adopted the Restricted Stock Limit Amendment because of the Company's admitted violation of
11 the Restricted Stock Limit, which is likewise not disclosed in the 2012 Proxy.

12 56. Nor does the 2012 Proxy disclose the effect of the Restricted Stock Limit
13 Amendment on the Company's outstanding equity awards. As of August 28, 2012, the Company
14 had issued 370,179 shares of common stock in excess of the Restricted Stock Limit. The 2012
15 Proxy fails to disclose this material fact and does not disclose whether or how the stockholders'
16 approval or disapproval of the Restricted Stock Limit Amendment will affect these 370,179
17 invalidly-issued shares. Furthermore, since FY07 the Board has issued a total of 2,045,000
18 Restricted Stock Units, the majority of which have not yet been settled. The 2012 Proxy also does
19 not disclose this material fact, nor does it disclose whether or how the stockholders' approval or
20 disapproval of the Restricted Stock Limit Amendment will affect the settlement of these
21 outstanding Restricted Stock Units.

22 57. In short, the 2012 Proxy is replete with material misstatements and omissions of
23 material fact concerning the purposes and effects of the Restricted Stock Limit Amendment.
24 Accordingly, the 2012 Proxy is materially false and misleading and unlawfully deprives Abaxis
25 stockholders of their right to cast a fully informed vote at the Annual Meeting.

THE GRANTOR DEFENDANTS' BREACHES OF FIDUCIARY DUTIES

58. The Grantor Defendants exceeded the bounds of the law and legitimate business judgment by granting, and subsequently issuing shares of common stock in settlement of, Restricted Stock Units in excess of the Restricted Stock Limit, thereby violating the 2005 Plan.

59. Grantor Defendants Bastiani, Casey, Singh, Evenhuis, and Tucker, as members of the Compensation Committee, further breached their fiduciary duties by approving and recommending to the Board that it grant Restricted Stock Units in excess of those that could be settled in accordance with the Restricted Stock Limit.

60. Grantor Defendants Severson, Bastiani, Evenhuis, Singh, and Tucker further breached their fiduciary duties by seeking shareholder approval of the 2010 Amendment without disclosing to shareholders that they had already granted, and subsequently issued shares of common stock in settlement of, Restricted Stock Units well in excess of the Restricted Stock Limit.

61. The foregoing misconduct was unjustifiable and constituted a gross breach of the Grantor Defendants' fiduciary duties as directors of the Company. The Grantor Defendants' foregoing misconduct was not, and could not have been, an exercise of good faith business judgment. Rather, it was intended to, and did, unduly benefit the Officer Defendants and other employees at the expense of the Company.

62. As a direct and proximate result of the Grantor Defendants' foregoing breaches of fiduciary duties, the Company has sustained millions of dollars in damages, including, but not limited to, the issuance of hundreds of thousands of *ultra vires* shares in excess of the Restricted Stock Limit.

DERIVATIVE AND DEMAND EXCUSED ALLEGATIONS

63. Plaintiff brings this action derivatively in the right for the benefit of Abaxis to redress defendants' breaches of fiduciary duties, unjust enrichment, statutory violations, and other violations of law.

64. Plaintiff will adequately and fairly represent the interests of the Company and its shareholders in enforcing and prosecuting its rights.

65. As a result of the facts set forth herein, Plaintiff has not made any demand on the Board to institute this action against the Individual Defendants. Such a demand would be a futile and useless act because the Board is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action.

66. At the time this action was commenced, the Board consisted of six directors: Board Defendants Bastiani, Casey, Evenhuis, Severson, Singh and Altman. The following directors are incapable of independently and disinterestedly considering a demand to commence and vigorously prosecute this action:

- a. Grantor Defendants Bastiani, Casey, Singh, and Evenhuis, because as members of the Compensation Committee they directly participated in and recommended that the Board grant Restricted Stock Units in excess of those that could be settled in accordance with the Restricted Stock Limit, as alleged herein, and therefore they are substantially likely to be held liable for the misconduct complained of herein;
- b. Grantor Defendants Bastiani, Casey, Evenhuis, Severson, and Singh, because as members of the Board they issued shares in excess of the Restricted Stock Limit, as alleged herein, and therefore they are substantially likely to be held liable for the misconduct complained of herein; and
- c. Director Defendant Severson, because he is directly interested in his receipt of shares improperly issued in settlement of Restricted Stock Units, as complained of herein.

67. Demand is also excused because the misconduct complained of herein was not, and could not have been, the product of a good faith exercise of business judgment. On the contrary, the Grantor Defendants engaged in *ultra vires* conduct that is not and cannot be protected by the business judgment rule.

CLASS ACTION ALLEGATIONS

68. Plaintiff brings certain claims in this action on its own behalf and as a class action on behalf of those who held Abaxis stock as of the close of business on August 31, 2012, which represents the record date for stockholders entitled to vote at the Annual Meeting (the "Class"). Excluded from the Class are the Individual Defendants and any person, firm, trust, corporation, or other entity related to, or affiliated with, any Individual Defendant.

69. This action is properly maintainable as a class action.

1 70. The Class is so numerous that joinder of all members is impracticable. As of
2 August 31, 2012, there were 21,932,263 shares of Company stock outstanding. Upon information
3 and belief, there are thousands of members of the Class.

4 71. There are questions of law and fact which are common to the Class, including, but
5 not limited to:

- 6 a. whether the 2012 Proxy contains materially misleading statements, or
7 omits information necessary to render it not misleading;
- 8 b. whether Plaintiff and the other members of the Class will be
irreparably harmed by the wrongs complained of herein; and
- 9 c. whether Plaintiff and the Class are entitled to injunctive relief.

10 72. Plaintiff is committed to prosecuting this action and has retained competent counsel
11 experienced in litigation of this nature. Plaintiff's claims are typical of claims of the other
12 members of the Class and Plaintiff has the same interests as the other members of the Class. All
13 Abaxis stockholders face the same threat that they will be forced to vote at the 2012 Annual
14 Meeting based upon the materially false and misleading 2012 Proxy. Accordingly, Plaintiff is an
15 adequate representative of the Class and will fairly and adequately protect the interests of the
16 Class.

17 73. The prosecution of separate actions by the individual members of the Class would
18 create a risk of inconsistent or varying adjudications with respect to the individual Class members
19 that would establish incompatible standards of conduct for the Board Defendants.

20 74. The Board Defendants have acted or refused to act on grounds that apply generally
21 to the Class, such that final injunctive relief and/or corresponding declaratory relief is appropriate
22 respecting the Class as a whole.

23 75. The questions of law and fact common to the members of the Class predominate
24 over any questions affecting only its individual members, such that a class action is superior to
25 any other available method for fairly and efficiently adjudicating the controversy.

26
27
28

COUNT I**Against Defendants Severson, Bastiani, Evenhuis, Singh, and Tucker
For Violation of § 14(a) of the Securities Exchange Act
in Connection with the 2010 Amendment**

76. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if set forth fully herein.

77. Plaintiff brings this Count I derivatively on behalf of the Company.

78. Rule 14-A-9, promulgated pursuant to § 14(a) of the Exchange Act, provides that no proxy statement shall contain “any statement which, at the time and in light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading.” 17 C.F.R. § 240.14-A-9.

79. The proxy statement issued by Grantor Defendants Severson, Bastiani, Evenhuis, Singh, and Tucker in connection with the shareholder vote on the 2010 Amendment, filed with the SEC on September 15, 2010 (the “2010 Proxy”), violated § 14(a) and Rule 14-A-9 because Grantor Defendants Severson, Bastiani, Evenhuis, Singh, and Tucker omitted material facts necessary to make the 2010 Proxy not false and misleading, specifically, the fact that they had already violated the 2005 Plan because they had already granted, and issued shares of common stock in settlement of, Restricted Stock Units well in excess of the Restricted Stock Limit.

80. The misrepresentations and omissions in the 2010 Proxy were material. The 2010 Proxy was an essential link in the accomplishment of the continuation of Grantor Defendants Severson, Bastiani, Evenhuis, Singh, and Tucker’s unlawful issuance of shares in excess of the Restricted Stock Limit, as revelations of the truth would have immediately thwarted a continuation thereof.

81. The Company was damaged as a direct and proximate result of the material misrepresentations and omissions in the 2010 Proxy, as alleged herein.

COUNT II

**Against Defendants Severson, Bastiani, Evenhuis, Singh, and Tucker
For Breach of Fiduciary Duty
in Connection with the 2010 Amendment**

82. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if set forth fully herein.

83. Plaintiff brings this Count II derivatively on behalf of the Company.

84. As alleged in detail herein, the Grantor Defendants owed the Company and its shareholders the fiduciary duty to make full, fair, and accurate disclosures to shareholders, including when seeking shareholder approval for Board actions.

85. Grantor Defendants Severson, Bastiani, Evenhuis, Singh, and Tucker breached their fiduciary duty of candor by issuing the false and misleading 2010 Proxy, as alleged herein.

86. The Company was damaged as a direct and proximate result of Grantor Defendants Severson, Bastiani, Evenhuis, Singh, and Tucker's foregoing breaches of their fiduciary duties, as alleged herein.

COUNT III

**Against Defendants Severson, Bastiani, Casey, Evenhuis, Singh, and Tucker
For Breach of Fiduciary Duty
in Connection with Violating the 2005 Plan**

87. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if set forth fully herein.

88. Plaintiff brings this Count III derivatively on behalf of the Company.

89. As alleged in detail herein, the Grantor Defendants owed the Company the fiduciary duties of loyalty and good faith to, among other things, exercise good faith in ensuring that the Company complied with all applicable federal and state laws, rules, regulations and requirements and the Company's governing documents, *e.g.*, the 2005 Plan, as amended, including acting only within the scope of their legal authority.

90. Grantor Defendants Severson, Bastiani, Casey, Evenhuis, Singh, and Tucker breached their fiduciary duties of loyalty and good faith by granting, and subsequently issuing

1 shares of common stock in settlement of, Restricted Stock Units in excess of the Restricted Stock
2 Limit and in violation of the 2005 Plan, as alleged herein.

3 91. Grantor Defendants Bastiani, Casey, Singh, Evenhuis, and Tucker, as members of
4 the Compensation Committee, further breached their fiduciary duties by approving and
5 recommending to the Board that it grant Restricted Stock Units in excess of those that could be
6 settled in accordance with the Restricted Stock Limit, as alleged herein.

7 92. The Company was damaged as a direct and proximate result of Grantor Defendants
8 Severson, Bastiani, Casey, Evenhuis, Singh, and Tucker's foregoing breaches of their fiduciary
9 duties, as alleged herein.

10 **COUNT IV**

11 **Against Defendants Severson, Santa Ines, Aron, Ostoich, Wood and Mulroy** 12 **For Unjust Enrichment**

13 93. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if set
14 forth fully herein.

15 94. Plaintiff brings this Count IV derivatively on behalf of the Company.

16 95. Officer Defendants Severson, Santa Ines, Aron, Ostoich, Wood and Mulroy
17 received excessive and unwarranted grants of Restricted Stock Units and shares of common stock
18 in excess of the Restricted Stock Limit and in violation of the 2005 Plan, as alleged herein.

19 96. It would be unconscionable and against the fundamental principles of justice,
20 equity, and good conscience, for Officer Defendants Severson, Santa Ines, Aron, Ostoich, Wood
21 and Mulroy to retain the excessive, unwarranted, and *ultra vires* payments and benefits they
22 received.

23 97. To remedy the Officer Defendants' unjust enrichment, the Court should enter an
24 order compelling them to disgorge to the Company the shares they have received in excess of the
25 Restricted Stock Limit and in violation of the 2005 Plan, as well as any proceeds they derived
26 therefrom, and any Restricted Stock Units they have received in excess of those that could be
27 settled in accordance with the Restricted Stock Limit, as well as any proceeds they derived
28 therefrom.

COUNT V

**Against Defendants Severson, Bastiani, Casey, Evenhuis, Singh and Altman
For Breach of Fiduciary Duty
in Connection with the 2012 Proxy**

98. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if set forth fully herein.

99. Plaintiff brings this Count V on behalf of itself and the Class

100. As alleged in detail herein, Board Defendants Severson, Bastiani, Casey, Evenhuis, Singh and Altman have breached their fiduciary duty to Plaintiff and the Class by causing the Company to file with the SEC and disseminate to Class members the materially false and misleading 2012 Proxy. The failure to fully and fairly disclose all material information in the 2012 Proxy will prevent Plaintiff and the Class from making an adequately informed decision at the Annual Meeting regarding the Restricted Stock Limit Amendment.

101. Unless the Annual Meeting is enjoined by the Court, Board Defendants Severson, Bastiani, Casey, Evenhuis, Singh and Altman will continue to breach their fiduciary duties owed to Plaintiff and the other members of the Class. As a result of Board Defendants Severson, Bastiani, Casey, Evenhuis, Singh and Altman's actions, Plaintiff and the other members of the Class will be irreparably harmed.

102. Plaintiff and the Class have no adequate remedy at law.

WHEREFORE, Plaintiff demands judgment as follows:

- A. Awarding the Company the amount of damages sustained by the Company as a result of the Grantor Defendants' statutory violations and breaches of fiduciary duties;
- B. Ordering the Officer Defendants to disgorge to the Company the shares they have received in excess of the Restricted Stock Limit and in violation of the 2005 Plan, as well as any proceeds they derived therefrom, and any Restricted Stock Units they have received in excess of those that could be settled in accordance with the Restricted Stock Limit, as well as any proceeds they derived therefrom;
- C. Enjoining the Annual Meeting unless and until the Board Defendants cure the materially false and misleading 2012 Proxy;
- D. Granting appropriate equitable relief to remedy the Grantor Defendants' statutory violations and breaches of fiduciary duties;


- 1 E. Awarding Plaintiff the costs and disbursements of the action,
2 including reasonable attorneys' fees, accounts' and experts' fees,
3 costs and expenses; and
- 4 F. Granting such other and further relief as the Court deems just and
5 proper.

6 **JURY TRIAL DEMANDED**

7 Plaintiff demands a trial by jury.

8 DATED: October 1, 2012

9 **KESSLER TOPAZ**
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Attorneys for Plaintiff

VERIFICATION

I, Stephen Olish, Executive Director of the Police Retirement System of St. Louis, verify that I have reviewed the foregoing Verified Shareholder Derivative Complaint, and that the allegations as to myself and my own actions are true and correct and that the other allegations upon information and belief are true and correct.

Dated: Sept 28, 2012

Stephen S. Olish
(Signature of Stephen Olish)